

MINUTES

WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,
Third Floor, Historic Court House,
Boonville, IN

Tuesday, October 15, 2013, 6:00 PM

PLEDGE OF ALLEGIANCE - A moment of silence was held followed by the Pledge of Allegiance.

MEMBERS PRESENT: Guy Gentry, President; Mike Moesner, Amanda Mosiman, Richard Reid, and Jeff Willis.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director; Molly MacGregor and Jamie Key, Staff.

MEMBERS ABSENT: Brad Overton and Jeff Valiant.

MINUTES: Upon a motion made by Richard Reid and seconded by Mike Moesner, the Minutes of the last regular meeting held August 12, 2013 and September 9, 2013, were approved.

The President explained the Rules and Procedures.

REZONING PETITION:

PC-R-13-08 Petition of River Ridge Church of Christ, Inc. by Charles Bartlett, Minister To rezone 1.8 acres located on the N side of Vann rd. approximately 1225' E of the intersection formed by Prospect Dr. & Vann Rd. from "M-2" General Industrial to "C-4" General Commercial, Lot 7 in Warrick Research & Industrial Center #6 recorded in Doc. # 2000R-004446 in the Office of the Warrick County Recorder, Ohio Twp. *Advertised in the Standard October 3, 2013.*

Charles Bartlett was present.

The President called for a staff report.

The Executive Director said they have submitted all the return receipts from certified mail of notice of this meeting to the adjacent property owners. Mrs. Rector says the request is to rezone the lot from "M-2" General Industrial to "C-4" General Commercial. Mrs. Rector said the Comprehensive Plan shows the area to be industrial. She added that there is a building on the property that was constructed for a counter top business. She said the property to the North, East, and West are zoned "M-2" and the property to the South is zoned "A" Agricultural. Mrs. Rector said there is no flood plain on the property. She added there is an existing commercial driveway. Mrs. Rector said this will be used as a religious facility (Church) which is allowed in a "C-4" zoning. She further added that a permit was issued in 2008 for a commercial building. She said the owners also had a new sewer permit, they constructed the building but they never put in the sewer line. She stated that they went out of business and put their property up for sale, the church

has purchased the property currently. Mrs. Rector said that they contacted Newburgh sewer and were told they would have to put in a sampling man hole, but if they were commercial they would not need the man hole. Mrs. Rector told the Board members that the letter from Newburgh Sewer is included in your packet. Mrs. Rector said the church has filed to rezone the property in order to save money on the sewer installation. Mrs. Rector said she did request this letter from Newburgh sewer, because she didn't know that they went by the zoning and not the use of the property. She said when she got it in writing she questioned it because you can put a residence in a commercial zoning. She questioned why they didn't go by use. Mrs. Rector said Susan at the sewer department explained that is only industrial zoning that requires this and in order for them not to do all this they will have to change the zoning. Mrs. Rector said that Charles Bartlett is filing for a change in zoning only for this reason.

There being no remonstrators and no farther questions by the Board, the President called for a motion.

Richard Reid made a motion to approve the rezoning, the motion was seconded by Mike Moesner and unanimously carried.

The President stated the applicant will have to come before the Board of Commissioners on November 12th at 4:00 P.M.”

AMENDING ORDINANCE TO THE SUBDIVISION CONTROL ORDINANCE:

AMENDING ORDINANCE TO AMEND ARTICLE III A PROCEDURES FOR SUBMISSION OF PLATS SECTION 13: PROOF OF FINANCIAL RESPONSIBILITY (MAJOR SUBDIVISIONS) SUBSECTION (5) BY AMENDING (ii) AND ADDING (iii) OF THE SUBDIVISION CONTROL ORDINANCE. Advertised in the Standard October 3, 2013.

Mrs. Rector stated that this is the ordinance that was presented to the Board at the August meeting regarding Newburgh's stance on the letters regarding letters of credit and sewer taps. She also stated that this is what you approved to be advertised at that meeting.

Mike Moesner made a motion to approve, the motion was seconded by Amanda Mosiman and unanimously approved.

OTHER BUSINESS:

FORMAL COMPLAINT: Erskine & Lucile Asher ~ 712 E. Gough Ave, Boonville, IN ~ Junk Salvage yard in an “R-1A” One Family Dwelling zoning district. Cease and Desist Notice and Notice to Appear sent June 17, 2013. Continued from the July 8, 2013 meeting.

Allan Asher was present.

Mrs. Rector stated that a complaint was filed against this property owner stating, “Junkyard-trash in yard and Abandoned vehicles.” She said on June 10th Dennis Lockhart went to the

property and stated that the site was a mess. She said that Dennis Lockhart said there were junk cars, trash, and weeds throughout the property.

Mrs. Rector stated that we have sent a cease and desist letter to Mr. & Mrs. Asher informing them that they were in violation and were to appear at the July 8th meeting. She said we also informed them that a re-inspection was to be done of their property within a week of the meeting. Dennis Lockhart went back to the property on July 5th to take pictures. He stated, "I have visited this site and did not see any changes." Mr. Asher appeared before the Board on July 8, 2013 and stated the house was his deceased parents and he was in the process of getting title to the property. Mrs. Rector said he stated that he was working on cleaning up the property and was asked to come back at the September meeting. She said, due to no business being filed, the office sent him a letter informing that he would be granted an additional month and should appear at this meeting. Mr. Asher is now the owner of record of the property. She said that the Zoning Inspector visited the property on October 11, 2013 and reports the property looks the same as it did when he first visited.

Mr. Asher stated that he has had a few guys interested in buying cars from the property, but no one has followed through. He said he has hauled off several loads, but you might not be able to notice due to the cars still being present. He also stated that while he was working outside he got bit by a spider and then had an allergic reaction to the antibiotic. He said that this has put him behind as well. He added that it will cost him \$17.00-\$25.00 to haul off anything more than one-thousand pounds instead of the \$10.00 that it was before. He stated that he knows that doesn't sound like much, but when his mother passed they lost two-thousand dollars of income. He stated he is trying to find a job, but has not had any luck.

The President asked if there is any metal scrap or if it is mostly "throw away stuff."

Mr. Asher replied that it is mostly things that can be thrown away. Mr. Asher replied that if he could get his truck fixed and not have to rely on other people then he could get things done faster.

The President asked Mr. Asher how much longer he will need to get this done.

Mr. Asher replied, it should be taken care of in the next couple weeks. He said that his brother-in-law is picking one of the cars up for sure in the next week or next week.

The President asked Mr. Asher how many cars will that leave him with after his brother-in-law picks one car up.

Mr. Asher replied that everything there needs batteries which are very costly.

Mrs. Rector asked him how many vehicles he currently has and how many do you need to get rid of?

Mr. Asher said there are eight and he plans on keeping three of them. Mrs. Rector says there are eight total and you need to get rid of five.

Mrs. Rector stated that she doesn't know much about used cars, and asked if they are worth selling.

Mr. Asher replied that, yes they are for the most part. Mr. Asher stated that usually he has people knocking every three to four days interested in buying the cars but recently he hasn't had anyone interested.

The President stated that this started in June and it's been about five months that have passed since this all started and according to the inspection report it says that it looks the same as it was the last time he was there.

Mr. Asher replied that he has taken several loads.

The President asked if he has mowed.

Allan Asher said that he did mow last Friday.

The President asked what the Boards wishes were.

Mr. Moesner asked how much longer this situation can drag on.

The President replied that he is concerned about the neighbors.

Mr. Asher states that his neighbors all know what is going on and that they have not given him any grief about it. Mr. Asher then asks if he could see the original complaint.

Mrs. Rector said, yes you can it is a public record and thinks the complaint was filled by the city.

Mr. Asher said that he could see that because he and Bill Floyd had bumped heads before.

Mrs. Mosiman stated that is beside the point and this has gone on long enough.

Mr. Asher replied that there have been a lot of things that have gone on recently.

Mr. Willis asked Mr. Asher if he has tried calling any scrap yards.

Mr. Asher says that they only wanted to give him \$400.00, and he feels they are worth more than that.

Mr. Willis said that some of the cars you can look at them and tell yourself no one is going to give me more than \$500.00 for this so if you can get \$400.00 from them and you can get them ready and do all of them at the same time, then it would be worth your time. Mr. Willis said it

may be \$100.00 less than what you were going to get but they will be out of the way. Mr. Willis stated that at least you would be able to move stuff and make it look much nicer.

Mrs. Mosiman said if you don't get it fixed, you will end up with court and a bigger financial problem.

Mr. Asher said that he understands.

Mr. Willis advised him to put for sale signs in the cars and clean them out and then people might be more interested in buying them.

The President said the wagon, and all of the cars look like they are full of stuff.

Mr. Asher said they have become storage, because he ran out of room to put things.

The President asked the board how much time to give him.

Mr. Willis said lets have him report to the next meeting and see how much progress is made.

The President told Mr. Asher, if by that point there is no progress they will have to do something different.

Mr. Moesner made a motion to give him 30 days.

Mrs. Rector said the next inspection will be on November 8th, she told him that he will need to be at the meeting and that the Area Plan Commission will send him an agenda.

The motion was seconded by Richard Reid and unanimously carried.

The President told Mr. Asher to have everything cleaned up by the 8th, it will be the easiest.

Mr. Asher says that he will.

FORMAL COMPLAINT: A formal complaint was filed on August 6, 2013 stating neighbor has a number of abandoned cars in back yard. The Zoning Inspector went to the property on August 7, 2013 and reported he found six cars and a boat in the back yard. A cease and desist letter was sent to the owners on August 26, 2013, informing them of the violation and that they needed to appear at this meeting. The Zoning Inspector re-visited the property on October 11, 2013 and reports the property has been cleaned up.

The President stated that they are not present.

Mrs. Rector replied that it has been cleaned up.

Mr. Moesner makes a motion to take Matthew Wilson and Tamara Gentry at 5111 Landview Drive off of the agenda.

The motion was seconded by Mr. Reid and is unanimously carried.

ATTORNEY BUSINESS:

Attorney Doll said he has been reviewing a complaint filed concerning Squaw Creek Mine. He stated the complaint wants us to reconsider the environmental impact of the current mining operation. He explained to the Board the circumstances of the complaint and he feels that the Board has no jurisdiction regarding the issues cited in the complaint.

Mrs. Mosiman made a motion to object the complaint and for the attorney to reply.

The motion was seconded by Mr. Moesner with all members voting for the motion except for the President who abstained. The motion therefore was carried.

EXECUTIVE DIRECTOR BUSINESS:

Mrs. Rector asked Mr. Reid if he understood their previous discussion about unsafe buildings.

Mr. Reid said that there is no funding on it and he wishes that we could do something about it. He stated that the reason he made a complaint was because the people in his neighborhood were unhappy.

Mrs. Rector said that when we had the meeting about it, we came to conclusion that the council would not fund this issue so therefore we are not able to do anything further at this time. Mrs. Rector says that she just wanted to make sure everything was clear. She said she didn't want him to think that she was ignoring the issue.

Mr. Reid said that it seemed to him that the land is very valuable to them and he thinks that we could threaten them by saying if they do not tear it down then they will get the land taken from them.

Mr. Moesner asked if anyone is paying taxes.

Mrs. Rector stated that the property was owned by Greg Moore and then he went bankrupt on it, the bank taken it back and now and it's still sitting there, but has a new owner.

The President said that since they are paying taxes on it there is nothing we can do.

Mrs. Rector agreed, and said she thought it burned.

Mr. Willis stated that if we do a jurisdiction to tell them they have to do something to it.

Mrs. Mosiman said no one will fund it.

Mrs. Rector stated that we have no way of funding it, therefore we cannot take them to court for it.

The President said it cannot be classified as a junk yard because there is no trash the only thing is that it has obnoxious weeds, and that is a health concern.

Mrs. Rector added that if we did take them to court and they didn't tear it down, we couldn't tear it down either, due to not having any funds. She said there are also Indiana Codes that we would have to go through to have an unsafe building ordinance. She said that this would have to be approved by the Commissioners, not us.

Attorney Doll said that at one time Warrick County had an unsafe building ordinance and the County Commissioners indicated that the County Council will always refuse to fund it. He said that the Indiana General Assembly has passed a uniform unsafe building act and they have invited all ninety-two counties to adopt the state statute as their own local ordinance by a one sentence ordinance. He added that when Warrick County found that it wasn't getting funding for it, they decided they would be better off to repeal the unsafe building act then to have an unenforceable statute ordinance. He said that if they failed to carry it out then and a child wandered in and gets hurt. He said this would create a liability for the county. Attorney Doll said facing this risk they repealed the unsafe building act. He added that this makes perfect sense. Mr. Doll said that unless you can get a commitment from the County Council to fund and it's not an inexpensive process. He said that the county has no statute to tear down an unsafe building and we don't have any specific jurisdiction and probably wouldn't if the county adopted the ordinance, it probably should be the building inspector.

The President asked if the Commissioners could pass an ordinance to create a tax fund.

Attorney Doll replied that taxes are controlled by the local property tax control board and the only way they could do that is if they created a special tax district and made an assessment based on that for purposes of tearing down buildings. Attorney Doll added that it is not politically popular to do so. Attorney Doll stated the only possible toehold of a case would be if we elated it to nuisance. He said even if we do that, all that is likely to happen is a court order from superior court to no longer make it a nuisance. He said they could probably do that by sealing access off so that kids could not get in it.

The President stated that this would be better than what it is now.

Attorney Doll agreed. He stated that if this is the wish, we do have the nuisance mechanism to file a complaint against them to see if we could get them to respond to that, but we will never get the building torn down. Attorney Doll added that we do not have that much power in our ordinance.

Mr. Willis asked if they are local or out of town.

Mrs. Rector said to put in to consideration if we do this for one situation we will be doing this for every building in the county that has this similar issue. She said if you open the door for one you better be prepared for every single one.

Mr. Willis asked if this is in the city of Newburgh.

The Board replied no it is right beside Wal-Mart.

Mrs. Mosiman asked, “Why can’t Wal-Mart pay to tear it down, it’s their neighbor”?

Mrs. Rector added that it will probably eventually get taken care of, they are probably just waiting for the sewer dispute to get over with and the road to get approved and then they will tear it down and do something with the land.

The President agreed.

Mr. Willis said that he wonders if someone that is not even local bought it at a bank sell, maybe they don’t know how bad it is.

Mrs. Rector said, they know.

Attorney Doll said we can consider it to the next meeting. He says we actually don’t have a citizen complaint; we have a Commissioner’s complaint. He said this is appreciated, and if you would like for it to be considered for the next meeting to file the nuisance lawsuit against it we could do that. He repeats that they could cure this by sealing the building.

Mr. Reid stated that at least it would be a start, he said but there is still no roof on the house.

Mrs. Mosiman added that the ultimate objective is to get it torn down and if we can’t do that, then what’s the point of wasting the resources of this Board’s time.

The President added that the least we could do is have the Health Department write a letter stating that, this is a health hazard and threaten them to take action to correct it.

Mrs. Rector said that she doesn’t know if the building inspector has any authority to condemn it. She added that Adam needs to answer these questions.

The President believes that Adam said in his email that once it is condemned then it does come back to the county, so you probably don’t want to go that far, but you can say that it is looking like it might get there.

Mr. Reid said a threatening letter might help to get something done, other than doing nothing.

Mrs. Rector asked if we want to bring this up next month.

The President said yes, unless the Commissioners take care of it before hand.

CONTINUED... EXECUTIVE DIRECTOR BUSINESS: Mrs. Rector said the only thing she wants to report is that Joe will be starting part time on December 13th. His position was cut to a full time position to a part time position. She also said that Sheila's son is very ill and she is in St. Louis at the hospital with him and most likely will be the rest of the week. Mrs. Rector stated that Sheila will also be off for her foot surgery on the 30th. She says this is going to be a six week process. She added that she will be off next week due to not having any other time to take her days off until next year. Mrs. Rector asked that everyone be patient if we don't get things done quickly. She said there is a lot going on and it is things we cannot help. She said we will do the best we can.

Being no other business, Richard Reid made a motion to adjourn at 6:45 P.M., the motion was seconded by Amanda Mosiman and unanimously carried.

Guy Gentry, President

ATTEST:

Sherri Rector, Executive Director